IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER ST.NO.5523 OF 2007.

Babbar Dhotre & others. ... Appellants.
Versus.
The Municipal Corproation of Greater Mumbai. ... Respondent.

Shri A.G.Damle i/by Shri Sudhir Pawar for the Appellants.

Ms.Geeta Jogalekar for the Respondent.

CORAM : ABHAY S.OKA, J.

DATED : 14th March, 2007.

P.C.:

1. Admit. The Advocate for the Respondent waives service. Taken up for hearing forthwith.

2. The Appellants have taken exception to the order dated 9th March 2007 by which the learned trial Judge has declined to grant ad-interim relief in favour of the Appellants. The Appellants filed a Civil Suit for challenging Notice under section 351 of the Mumbai Municipal Corporation Act, 1888 issued by the Respondent and the order of demolition passed on the basis of the said notice by the Respondent-Corporation. A perusal of the impugned order shows that the merits of the case made out by the Appellants are not at all considered by the learned trial Judge. The learned trial Judge has referred to a suit filed by the Intervenor/Caveator in the Court of Small Causes. The learned trial Judge has

merely observed that as suit is pending in the Small Causes Court, it will not be just and proper to grant any ad-interim relief. Only on this ground, the learned trial Judge has rejected the prayer for grant of ad-interim relief and has directed the Appellants to implead the Intervenor as party to the suit by moving appropriate Chamber Summons.

3. The prayer in the Notice of Motion was for injunction restraining the Respondent from demolishing the suit structure on the basis of the notice and the order impugned in the suit. Without considering the merits of the challenge to the notice and the order, the prayer for ad-interim relief could not have been refused only on the ground that the intervenor has filed a suit in the Court of Small Causes. In my view, the said approach of the learned trial Judge is completely erroneous.

4. The learned Counsel for the Appellants states that the Appellants are ready and willing to implead the intervenor who appeared before the trial Court as a party to the suit.

5. In my view, the prayer for ad-interim relief deserves to be heard afresh after impleading the intervenor as party Defendant. For a reasonable time,

the Appellants will have to be protected.

6. Hence the Appeal is disposed of by the following order:

i) The impugned order dated 9th March 2007 is quashed and set aside.

ii) The Appellants are permitted to implead the intervenor as a party Defendant to the suit. The trial Court will permit the Appellants to carry out amendment on production of an authenticated copy of this order.

iii) After the amendment is carried out, the trial Court will hear the prayer for ad-interim relief afresh. The Appellants will give notice to the newly added Defendant.

iv) To enable the trial Court to hear prayer for ad-interim relief afresh, the parties to this Appeal will maintain status-quo as of today in all respects in respect of the suit structure for a period of three weeks from today.

v) The trial Court will decide the prayer for ad-interim relief without being influenced by the grant of limited ad-interim relief by this Court.

vi) The Appeal is allowed in the above terms with no order as to costs.

vii) The parties and the trial Court will act on an authenticated copy of this order.

Judge.